

¹ Rule 25(d) of the Federal Rules of Civil Procedure allows for the automatic substitution of an official's successor for an official sued in his official capacity. FED. R. CIV. P. 25(d). Since the filing of the Petition, (1) Jeffrey A. Rosen began serving as Acting United States Attorney General, and (2) Federal Emergency Management Agency Administrator Pete Gaynor began serving as interim head of DHS, replacing Acting Secretary Chad Wolf. Accordingly, the Clerk of Court is directed to change the style of the case to reflect these change as set out in the style of this Order.

judge ordered Gutierrez removed to Cuba. (ECF Nos. 1, 9). Respondents have now advised the Court that Gutierrez was removed to Cuba on December 29, 2020. (ECF No. 10).

ANALYSIS

Prior to his removal, Gutierrez filed this section 2241 Petition challenging his continued detention. (ECF No. 1). Because Gutierrez has been removed, the Court finds his Petition and Respondents' Response and Motion for Summary Judgment moot. (ECF Nos. 1, 9).

Applicable Law

"Article III of the Constitution limits federal 'Judicial Power,' to 'Cases' and 'Controversies.'" *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 395 (1980). A case becomes moot, depriving the Court of power, "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Id.* at 396 (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969)). A party must continue to have a personal stake in the outcome of the lawsuit. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). In other words, a party seeking relief must have suffered, or be threatened with, an actual injury that is likely to be redressed by a favorable judicial decision. *Id.* In the absence of an actual injury that is likely to be redressed by a favorable judicial decision, the matter becomes moot and subject for Summary Judgment. *See Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990).

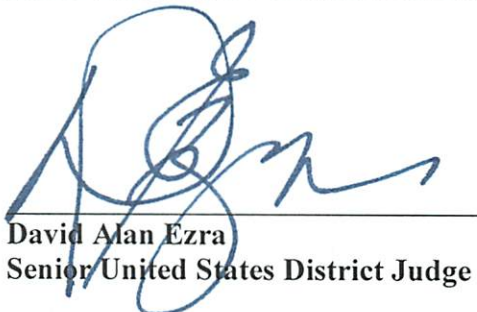
Application

In his Petition, Gutierrez requested that he be released on his own recognizance, on parole, on "low bond," or on "reasonable conditions of supervision." (ECF No. 1). As set out above, Respondents have filed an Advisory stating Gutierrez is no longer detained by ICE and has been removed to his home country. (ECF No. 10, Exh. 1). A search of the ICE online locator system confirms that Gutierrez is no longer in the custody of ICE. *See* <https://locator.ice.gov/odls/#/results>

(last visited Jan. 20, 2020). The locator system returned “zero (0) matching records” in response to a search using both Gutierrez’s “A-Number” and country of origin and his name and country of origin. *Id.* Because he is no longer detained, the relief he seeks is no longer available. In other words, the Court can no longer redress his alleged injury with a favorable judicial decision. *See Spencer*, 523 U.S. at 7. Accordingly, Gutierrez’s claim for relief is moot and his Petition is subject to dismissal, as is Respondents’ Response and Motion for Summary Judgment. *See id.*

IT IS THEREFORE ORDERED that Petitioner Asiel Pena Gutierrez’s 28 U.S.C. § 2241 Petition for Writ of Habeas Corpus (ECF No. 1) and Respondents’ Response and Motion for Summary Judgment (ECF No. 9) are **DISMISSED WITHOUT PREJUDICE AS MOOT**.

SIGNED January 27, 2021.



David Alan Ezra
Senior United States District Judge